IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Jitendra Vs. State of Rajasthan
(D.B. Criminal Appeal No.435/2004)

2. State of Rajasthan Vs. Jitendra and Others
(D.B. Criminal Appeal No.73/2005)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 20-12-2003 in Sessions Case No.113/2001 passed by Shri Bhagwan Sharda, RHJS, Additional Sessions Judge (Fast Track) No.1 Ajmer.

3. Bhanwaroo Khan Vs. State of Rajasthan & Others
(D.B. Criminal Revision Petition No.322/2004)

D. B. Criminal Revision Petition under Sec.397/401 Cr.P.C. against the judgment dated 20-12-2003 in Sessions Case No.113/2001 passed by Shri Bhagwan Sharda, RHJS, Additional Sessions Judge (Fast Track) No.1 Ajmer.

Date of Judgment: April 20, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Vinay Pal Yadav, for the appellants in Appeal No.435/2004 and respondents in Revision Petition & Appeal No.73/2005.

Mr. M.L.Goyal, Public Prosecutor for the State.

Mr. Biri Singh Sinsinwar, for complaint.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Misfortune stalked Mehboob Ali on September 16, 1998 while he was traveling in a car along with his family members. Three monsters traveling in another car way laid Mehboob Ali and shot him dead. Jintendra (appellant herein) alongwith co-accused Rajesh and Rajpal put to trial before

learned Additional Sessions Judge Fast Track No.1 Ajmer for having committed murder of Mehboob Ali. Since Rajesh died and Rajpal absconded, trial proceeded only against appellant and on completion of trial learned Judge convicted and sentenced appellant vide judgment dated December 20, 2003 as under -

U/s.302/34 IPC:

To suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer simple imprisonment for three months.

U/s.341 IPC:

To suffer simple imprisonment for one month and fine of Rs.500/-, in default to further suffer simple imprisonment for seven days.

U/s.3/25 Arms Act

To suffer rigorous imprisonment for two years and fine of Rs.1000/-, in default to further suffer simple imprisonment for fifteen days.

U/s.3/27 Arms Act

To suffer rigorous imprisonment for five years and fine of Rs.2000/-, in default to further suffer simple imprisonment for one month.

The substantive sentences were ordered to run concurrently.

Appellant State of Rajasthan and complainant Bhanwaroo Khan also assailed the said judgment by filing Cr.Appeal No.73/2005 and Cr. Revision Petition No.322/2004.

2. It is the prosecution case that informant Bhanwaroo Khan (PW.12) handed over a written report (Ex.P.15) to SHO PS Magliawas, at Amrit Kaur Hospital Beawar to the effect that on September 16, 1998 around 1 PM the informant alongwith his brother Mehboob, daughter

Dilkhush and nieces Sbina, Rabina and Firdaus proceeded in Maruti Esteem RJ 30 C 1171 from village Kelva for Sujangarh. When they reached near village Kesarpura they had to stop their car because road was blocked on account of accident. One Maruti Zen in the meanwhile touched their car. Three persons were sitting in Maruti Zen. Mehboob Ali who was in the car some how managed to cross the road and while the car had passed village Mangliawas, Maruti Zen over took it and persons sitting in Maruti Zen asked Mehboob to stop the car. As soon as the car got halted two persons armed with revolvers came down of Maruti Zen. When the informant and his brother (Mehboob Ali) got down of their car the miscreants started abusing them. One miscreants who was not having revolver, lifted envelope from the car. When Mehboob Ali objected to it, one person opened fire at the informant but he managed to save him. Another miscreant in the meanwhile opened fire at Mehboob Ali that hit on the left side of his chest as a result of which he fell down. The miscreants took out the key of Maruti Esteem and fled away. After some time police arrived and removed Mehboob Ali to the Hospital where he was declared dead. On that report case under sections 302, 307, 394, 341 and 34 IPC and Section 3/25 Arms Act was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Tack) No.1 Ajmer. Charges under sections 302, 302/34, 394, 341 IPC and Sec.3/25 and 27 Arms Act were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 34 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned counsel for the appellant, learned counsel for the complainant and learned Public Prosecutor, and with their assistance we have scanned the material on record. Death of deceased Mehboob Ali was homicidal in nature. Vide post mortem report (Ex.P-19) following antemortem injury was found on the dead body :-

> 1. Gunshot wound on left side chest 2" outside left nipple size 1¾" x ¾" x 6" depth.
> It is semilumar in shape margins irregular, redish in colour, they are invertic.
> There is blackening discoloration of skin around the wound which is ½" wide belt. There are three small porches of (Blachis) discoloration near the wound. There are small patches of black colour in the based of wound. The skin around the wound is bluish in colour which is away from blackish coloration.

In the opinion of Dr. Rajesh Tekchandani (Pw.23) the cause of death was gun shot wound leading to injury to left lung profuse bleeding.

4. In order to establish guilt of the appellant the prosecution examined informant Bhanwaroo Khan (Pw.12), Rubina (Pw.1), Sabina (Pw.2), Dilkhush Bano (Pw.22) and Firdaus (Pw.13), who were sitting in the car along with deceased at the time of incident. Corroborating the averments made in the FIR Bhanwaroo Khan (Pw.12) stated that on September 16, 1998 he along with Mehboob, Dilkhush. Sabina, Rubina and Firdaus was going from Kelva to Sujangarh in the car. When their car reached near Beawar he found that traffic was not moving because of accident. Suddenly a Maruti Zen of white colour pushed their car from the back. Three persons were sitting in that car. After their car crossed the traffic and passing

Mangliawas Maruti Zen overtook their car and forced them to stop their car. Two persons armed with revolvers got down of Maruti Zen and pulled informant and his brother Mehboob out of the car and started beating them. When the third person took out the key of car and lifted envelop Mehboob objected to it. One of the person opened fire at the informant but the informant managed to save himself. Another person opened fire at Mehboob that hit his chest, as a result of which he fell down. All the persons then fled away. After some time police arrived and removed Mehboob to hospital where he was declared dead. Testimony of Bhanwaroo Khan gets corroboration from the statements of Rubina, Sabina, Dilkhush Bano and Firdaus.

5. It also appears from record that after their arrest the accused Rajesh, Jitendra and Rajpal were kept `Baparda' (with covered face). Identification parade was held by Shri Bhuvan Goyal (PW.30) learned Judicial Magistrate No.3 Ajmer on October 7, 1998. In the parade Bhanwaroo Khan correctly identified Jitendra, Rajesh and Rajpal. A look at the identification memo (Ex.P.16) reveals that learned Magistrate observed all necessary precautions before conducting identification proceedings.

6. Constable Rajesh Kumar (PW.32) deposed that on September 16, 1998 when he was posted at Police Station Dudu he received information from Control Room Ajmer that vehicle bearing No. H,R. 02 C 0002 be stopped. Police Station Dudu then put barriers for the Naka Bandi. Having found the police obstructing the way one Maruti Zen took turn towards Narena Road. Since Railway crossing gate of Narena Road was closed, the miscreants left the car and rushed towards Jungle. He (Rajesh

Kumar) and other police persons chased them and caught hold of them. Accused Rajpal had loaded Desi Katta 12 bore (country made gun) and two bullets were kept by him in his pocket. Rajpal got arrested and necessary memos were drawn. Jitendra was arrested vide arrest memo Ex. P.45 whereas Narain Lal and Mool Singh put their signatures on the arrest memo. Jitendra also put his signatures on the memos. Maruti Zen also got seized vide recovery memo Ex. P.47 which bears the signatures of Rajesh, Mool Singh, Narain Lal as well as Jitendra, Rajpal and Rajesh.

7. Mool Singh ASI (PW.34) corroborated the testimony of Rajesh Kumar (PW.32) and deposed that after the arrest the faces of three miscreants were covered and keeping them `Baparda' they were handed over to C.O. Kishangarh and SHO Bander Sindra. Mool Singh and Rajesh Kumar identified appellant Jitendra in the trial court.

8. Jabbar Singh I.O. ( PW.29) at the instance of Rajesh got recovered the key and envelops, country made gun and empty got recovered on the basis of disclosure statement of accused Rajpal. Appellant Jitendra gave information under section 27 of the Evidence Act to Jabbar Singh that he had concealed Desi Katta in a pit. Disclosure statement of Jitendra got recovered in the Memo Ex.P.34. On the basis of information supplied by Jitendra, Desi Katta ( loaded ) got recovered vide recovery memo Ex. P.13. In yet another information given by Jitendra to Jabbar Singh stain gun allegdly robbed by Jitendra from Haryana Police got recovered vide recovery memo Ex. P.35. Vide mechanical report Ex. P.18 the key got recovered at the instance of Rajesh, was found of the car recovered from the possession of three accused.

9.Armour Bhawani Singh (PW.31) examined the guns recovered at the instance of appellant Jitendra and accused Rajpal and opined that they were serviceable firearms. Opinion of armour was drawn in the memo Ex. P.41. Sanction of prosecution ( Ex. P.49) under the provisions of Arms Act was accorded by Shri Karni Singh District Magistrate Ajmer ( Pw.33).

10. It is contended by learned counsel for the appellant that gun shot injury received by the deceased was attributed to accused Rajpal and it could not be established that the appellant shared common intention with accused Rajpal to cause death of the deceased. In regard to the conviction under sections 3/25 and 3/27 Arms Act learned counsel urged that Desi Katta was planted by the police in order to falsely implicate the appellant. Reliance is placed on the various authorities that will be considered in the later part of this judgment.

11. Section 34 IPC indicates the principles of joint liability in the doing of a criminal act. The essence of that liability is to be found in the existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. The distinct feature of section 34 is the element of participation in action. The common intention implies acting in concert existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from incriminating factors. It requires a pre-arranged planed it presupposes prior concern. Therefore, there must be prior meeting of minds. The prior concernt or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration made by

them just before mounting the attack (vide Ramashish Yadav vs. State of Bihar AIR 1999 SC 3830).

12. This being the requirement of law for applicability of section 34 IPC from the facts that appellant Jitendra and co-accused Rajpal and Rajesh overtook the car driven by the deceased and commanded the deceased Mehboob and his brother Bhanwaroo Khan to stop the car and get down of the car, it can be said that appellant Jitendra shared common intention with co-accused Rajpal and Rajesh. All the three culprits after committing offence fled away together. When police asked them to stop they did not obey the command and did choose a different route. Thereafter finding railway crossing gate closed they abandoned their car and ran in the jungle together. Appellant Jitendra was armed with the gun at the time of incident. All the three accused acted in accordance with their pre-arranging plan which presupposes prior concernt. They chased the car of deceased over took it and killed Mehboob Ali. In our opinion appellant Jitendra was rightly convicted and sentenced under section 302/34 IPC.

13. Facts of Kirti vs. State of Raj. ( 2006(1) Cr.L.R. (Raj.) 763 Manaji Kaluji vs. State of Gujrat ( 2006) 1SCC (Cr.) 736and Ramashish Yadav vs. State of Bihar (AIR 1999 SC 3830 are distinguishable and ratio indicated in these cases is not applicable to the facts of the instant case. The prosecution has established beyond reasonable doubt that the appellant shared common intention with accused Rajpal to cause death of Mehboob. After killing Mehboob Ali the appellant and other co-accused persons fled away in the car but they became unsuccessful in eloping away because there was `Nakabandi' at Police Station Dudu. After their arrest the accused were subjected to identification and Mehboob Ali correctly identified all the three accused persons . Appellant Jitendra was identified by the

witnesses at the trial. At his instance gun possessed by him at the time of incident got recovered. Testimony of witnesses despite searching cross examination could not be shattered. We thus see no infirmity in the finding of learned trial court.

14. So far as appeal and revision of respectively preferred by the State of Rajasthan and complainant are concerned we have heard learned Public Prosecutor and learned counsel for the complainant. We hardly see any merit in the contention raised on behalf of State of Rajasthan and complainant. Since Jitendra has been convicted under section 302/34 IPC and sentenced to suffer imprisonment for life, we see no good reason to convict him under section 302 IPC simplicitor.

For these reasons, we dispose of the instant matters in the following terms :

(1) D.B.Cr. Appeal No. 435 of 2004 preferred by appellant Jitendra stands dismissed and his conviction and sentence under sections 302/34 IPC, 341 IPC, as well as sections 3/25 of Arms Act and 3/27 of the Arms Act are maintained .

(2) Since accused respondent Rajesh died during pendency of appeal,D.B. Cr. Appeal No.73 of 2005 and D.B.Cr. Revision No.322 of 2004 qua accused respondent Rajesh stand abated.

(3) D.B.Cr. Appeal No.73 of 2005 and D.B.Cr. Revision No. 322 of 2004 seeking conviction of accused respondent Jitendra simplicitor under section 302 IPC stand dismissed.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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